



# EPA Considering Tribal Water Program Request

Lac du Flambeau Band of Lake Superior Chippewa Indians  
Lac du Flambeau, Wisconsin February 2006

## Contacts

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## EPA Indian policy

Under the U.S. Constitution and its own Indian policy, EPA works with federally recognized tribal governments as sovereign entities and not as political subdivisions of states or local governments.

For more details about EPA's Indian policy you can visit:  
[www.epa.gov/indian/1984.htm](http://www.epa.gov/indian/1984.htm)

The Lac du Flambeau Band of Lake Superior Chippewa Indians has applied to U.S. Environmental Protection Agency for authority under the Clean Water Act to run its own water quality program on its Wisconsin reservation.

## Public meeting scheduled

EPA will hold a public meeting on the application 7-9 p.m. Wednesday, Feb. 15, at Lac du Flambeau Public School, state Hwy. 47 S., Lac du Flambeau, Wis.

Consistent with EPA's regulations, the application was submitted to the state of Wisconsin for comments on the tribe's assertion of authority to carry out the water quality standard program. People wishing to comment about the Lac du Flambeau application should send them to Wisconsin Department of Natural Resources, which may incorporate the remarks into its official response to EPA (*see contact information lefthand box*). Comments must be received at WDNR by 5 p.m. Monday, Feb. 20. The Lac du Flambeau application is for water program authorization only. The tribe will have to submit another application for approval of water quality standards.

## Clean Water Act and tribes

Currently EPA is responsible for carrying out provisions of the Clean Water Act within the Lac du Flambeau reservation. But the Clean Water Act allows tribes to run their own water programs in a manner similar to the states. The first step in the process is to apply for the authority to carry out a program, as the tribe has done with the application. After a tribe is authorized to carry out the water quality standard program, it then develops the standards, provides an opportunity to the public to comment on those standards and finally submits them to EPA for approval.

One of EPA's roles in this system is to review water quality standards developed by states and eligible Indian tribes. In developing water quality standards, an eligible tribe would look at the appropriate uses (such as drinking, recreation or agriculture) for all surface water on the reservation and develop criteria to protect those designated uses.

A state or tribe running a water program is also authorized to grant or deny certification to a proposed discharge based on whether it violates its water quality standards. Downstream states or tribes may object to a permit proposed by an upstream jurisdiction if they believe the proposed activity would violate their own water quality standards

In 1987 Congress amended the water regulations to specify how eligible tribes could receive the same authorities as states. It also required EPA to establish a way to resolve unreasonable consequences that may result

from a tribe and a state adopting different water quality standards on common bodies of water. Since 1989, 32 tribes around the country have been authorized to run their own water programs including three tribes in the Great Lakes region -- the Mole Lake Band of Sokaogon Chippewa in Wisconsin, and the Fond du Lac Band of Chippewa and Grand Portage Band of Chippewa in Minnesota.

This application is the second by a Wisconsin tribe. The Mole Lake Band was given approval for its own water program and quality standards in 1995-96, and EPA's decision was upheld by the Wisconsin District Court and affirmed by the 7<sup>th</sup> U.S. Circuit Court of Appeals.

## **Exercising tribal rights**

A tribe's request to establish its own water quality program must demonstrate:

- that the tribe is federally recognized by the Department of Interior;
- that the tribe has a government carrying out substantial duties and powers;
- that the tribe has jurisdiction over the waters within its reservation;
- that the tribe has the capability to maintain the authorized water quality standards under the Clean Water Act.

EPA regulations provide for the state to have the opportunity to review tribal assertions of authority over reservation waters. The provision is not a veto power but a way to identify competing jurisdictional claims and ensures that the tribe has authority to administer the program. EPA evaluates the jurisdictional claims. The regulations limit participation in that review to states. Local governments and potentially affected residents should comment through their state government, not directly to EPA.

When a tribe's program application is approved, it can then propose water quality standards, which require public notice and comment. EPA's authority to approve or disapprove the standards applies only to areas specified under federal regulations. Many issues of concern to affected residents such as piers, boating and property values may not come under EPA's authority under the Clean Water Act.

## **The Lac du Flambeau application**

Last October, EPA Region 5 received the application from the Lac du Flambeau band for authorization to enforce its own water quality standards for all surface waters within the reservation.

The reservation contains many lakes and water resources that support a variety of uses, including drinking water, fishing, boating and rice growing. EPA provided notice to local governments. The full tribal application is available at the Minocqua Public Library, 415 Menominee St.; the tribal offices at 2500 Highway 47 N. in Lac du Flambeau; and at EPA Region 5, 77 W. Jackson Blvd., Chicago.

The application is also available online:

<http://www.epa.gov/region5/water/wqs5/wqstribes.htm>